

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications
and Energy on its own Motion
pursuant to G.L. c. 159, §§ 12 and 16, into the
collocation security policies of Verizon New England Inc.
d/b/a Verizon Massachusetts

D.T.E. 02-8

HEARING OFFICER RULING ON MOTION OF AT&T, SPRINT, GLOBAL NAPS,
COVAD, CONVERSENT, AND ALLEGIANCE TO SUSPEND CURRENT LITIGATION
PROCEEDINGS AND TO ESTABLISH AN INDUSTRY TASK FORCE ON NETWORK
SECURITY IN LIEU OF DIVISIVE LITIGATION AND REQUEST FOR EXPEDITED
RULING ON THE MOTION

I. INTRODUCTION

On January 24, 2002, the Department of Telecommunications and Energy ("Department") opened an investigation into the collocation security policies of Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"). On April 24, 2002, AT&T Communications of New England, Inc. ("AT&T"), Sprint Communications Company, L.P. ("Sprint"), Global Naps, Inc. ("Global Naps"), Covad Communications Company ("Covad"), Conversent Communications of Massachusetts, LLC ("Conversent"), and Allegiance Telecom of Massachusetts ("Allegiance") filed with the Department a Motion to Suspend Current Litigation Proceedings and to Establish an Industry Task Force on Network Security in Lieu of Divisive Litigation and Request for Expedited Ruling on Motion ("Motion"). In the Motion, the moving parties request that the Department (1) suspend the current procedural schedule, (2) establish an industry task force to address security issues at Verizon's central offices where carriers' networks are interconnected, and (3) rule expeditiously on the Motion.¹

The Hearing Officer requested comment on the Motion on April 24, 2002. Comments were received from Verizon, the Commonwealth of Massachusetts Office of the Attorney General ("Attorney General"), WorldCom, Inc. ("WorldCom"), XO Massachusetts, Inc. ("XO"), Qwest Communication Corporation ("Qwest"), and the International Brotherhood of

¹ The moving parties request that the Department rule before the parties are required to file testimony in this proceeding, which is scheduled for May 10, 2002.

Electrical Workers (“the Unions”).²

II. MOTION

In the Motion, the moving parties contend that Verizon, in its Panel Testimony, filed on April 5, 2002, misapprehends the gravity and proper focus of this proceeding (Motion at 2). According to the moving parties, Verizon is using this proceeding to re-assert anticompetitive collocation positions that the Department has previously heard and rejected, and claims of risk of intra-corporate vandalism from its competitive local exchange carrier (“CLEC”) customers, instead of focusing on terrorist threats (*id.*). The moving parties assert that Verizon’s collocation proposal, as defined in its Panel Testimony, does little to identify the legitimate security risks that terrorism and sabotage might present to Massachusetts’ telecommunications network, or to propose methods for addressing those threats (*id.*). The moving parties argue that Verizon’s Panel Testimony identifies random incidents of CLEC employees touching Verizon equipment, yet the Federal Communications Commission (“FCC”) and the Department have already found that these concerns do not justify the costly and burdensome restrictions and separate entrance requirements that Verizon now proposes (*id.* at 5). The moving parties contend that the Department must first identify specific and realistic types of hostile action and sabotage that were not contemplated when the current collocation rules were put in place, and then design meaningful policies to address them (*id.*).

The moving parties further claim that Verizon’s collocation proposal would violate the 1996 Telecommunications Act and the rules of the FCC that implement those provisions (*id.* at 6). The moving parties opine that it does not make sense to litigate a proposal that the Department does not have the authority to implement under current FCC rules (*id.*).

Finally, the moving parties maintain that the issues in this proceeding transcend partisanship (*id.* at 10). The parties argue that a cooperative process, such as an industry task force, is more appropriate to achieve the objectives of this proceeding (*id.* at 10). In the context of such a task force, carriers could share their best practices and insights and give the Department a more reliable examination of existing and potential alternative security procedures (*id.* at 4). The proposed task force would consist of representatives of the security operations from each party, and would invite security experts from law enforcement and other fields (*id.*

² On May 3, 2002, the Department received a letter from AT&T addressing the comments of Verizon and the Unions on the Motion. The procedural notice issued by the Hearing Officer on April 24, 2002 requesting comments on the Motion did not contemplate an additional round of reply comments, and AT&T did not seek leave to file additional comments. Therefore, the Hearing Officer will disregard AT&T’s May 3, 2002 letter.

at 10). The Department would participate in discussions, and review any recommendations made by the task force (*id.* at 11).

III. COMMENTS

Verizon, the Attorney General, and the Unions oppose the Motion. Verizon asserts that a formal investigation into collocation security concerns is warranted, and opposes the moving parties' attempt to shift the focus of the proceeding away from an examination of collocation security to a broader and more general inquiry into telecommunications security (Verizon Comments at 1). Verizon states that it would not be opposed to participating in settlement discussions³ with the parties to determine whether there may be common ground on issues raised in this proceeding, without modifying the current procedural schedule; if agreement can be reached before hearings, the procedural schedule can be suspended at that time (*id.* at 2). Verizon maintains that if the Department does suspend the procedural schedule, it do so for a brief period for the parties to determine if there is a reasonable basis for settlement (*id.* at 3).

The Attorney General also supports the commencement of settlement discussions, but opposes the suspension of the procedural schedule (Attorney General Comments at 3). Like Verizon, the Attorney General argues that the Department should maintain the procedural schedule, and that incoming testimony and discovery will help narrow the issues and assist in settlement discussions (*id.*). In the event that the parties reach agreement on a plan for increasing network security consistent with the concerns raised in the Order opening this investigation, the parties may file a motion at that time to postpone the hearings to finalize an agreement (*id.*).

The Unions contend that the current procedural schedule represents the most efficient and comprehensive vehicle for generating information necessary to develop analyses and strategies to maximize security at collocation sites (Union Comments at 2). The Unions also are unopposed to settlement discussions, as long as the Union is a participant at those discussions (*id.*).

XO, Qwest, and WorldCom filed comments in support of suspension of the procedural schedule. Both XO and Qwest contend that Verizon's collocation proposal does not address the real issue of network security (XO Comments at 1; Qwest Comments at 1). XO and Qwest also support the establishment of a task force as the more effective approach to address network security concerns in a bipartisan manner (XO Comments at 1-2; Qwest Comments at 1).

³ Verizon, the Attorney General, and the Unions read the moving parties' request for establishment of a task force to mean that the parties should engage in settlement discussions.

WorldCom urges the Department to suspend the procedural schedule, and to address network security in a collaborative fashion, but opposes an approach that involves state-specific solutions to an issue of national importance (WorldCom Comments at 1). WorldCom proposes that the issue be addressed on a national level, and that the Department suspend the procedural schedule until the findings of the Network Reliability and Interoperability Council (“NRIC”) issues its recommendations (scheduled to be issued at the end of the year) (id.). In the alternative, WorldCom asserts that the issue be addressed in a joint federal-state board on collocation security (id.). WorldCom submits that the NRIC, under the FCC, is an existing forum that is well-suited for addressing this issue, and that Verizon is already a participant (id. at 3). WorldCom asserts that a national approach would avoid the time-consuming process of participating in various state-sponsored proceedings, with the possibility of inconsistent results (id.).

IV. ANALYSIS AND FINDINGS

In its Order opening this investigation, the Department stated that the “purpose of this investigation is to review our prior findings with respect to access by personnel of other carriers to Verizon’s central offices and other facilities, and to assess the security measures in place to protect those facilities.” Collocation Security Investigation, D.T.E. 02-8, at 1, Vote and Order To Open Investigation (January 24, 2002). The Department elaborated on that purpose, stating that “[t]he purpose of this investigation is to review our prior findings with respect to Verizon’s security procedures and measures that apply to personnel of competing carriers in accessing their collocation sites in Verizon’s central offices and other facilities (e.g., remote terminals), and to determine which, if any, policies should be strengthened to safeguard telecommunications networks from human tampering to ensure reliable telecommunications service in Massachusetts.” Id. at 6. The Department further stated,

This investigation will determine whether Verizon’s security policies meet the statutory standard for “just, reasonable, safe, adequate and proper regulations and practices.” G.L. c. 159, § 16. Specifically, this investigation will include, but not be limited to, an examination of the following issues: (1) the extent and nature of appropriate access by personnel of other carriers to Verizon’s central offices and other facilities for accessing collocation sites; (2) whether cageless collocation arrangements remain an acceptable security risk;⁴ (3) the adequacy of security measures implemented in Verizon’s central offices and other facilities,

⁴ Cageless collocation arrangements are currently mandated by the FCC. If the Department determines that such arrangements constitute an unacceptable security risk, we would petition the FCC for an exemption from its rules requiring cageless collocation.

focusing on preventive, rather than “after-the-fact,” measures; and (4) any other related security issues.

Id.

The Department intended this investigation to focus on the issue of collocation security (as the caption to this investigation indicates). The scope of issues to be addressed by the proposed task force is far more broad than this particular investigation. For the limited issues within the scope of this investigation, the adjudicatory process is the more appropriate method to reach timely and specific results. The Hearing Officer therefore denies the moving parties’ request to suspend the procedural schedule and establish an industry task force.⁵

Broader issues of network security, though not part of this proceeding, are nonetheless important. The NRIC is addressing network security issues on a national basis. The Department is actively monitoring the work of the NRIC. In addition, the Department is reviewing the network reliability plans from LECs operating in Massachusetts. If the moving parties believe that particular network security concerns are not being addressed adequately at the federal level, they may identify those specific concerns for discussion outside this proceeding.

In order to ensure that CLEC prefiled testimony adequately addresses the issues the Department intends to investigate within the scope of this proceeding, the Hearing Officer hereby amends the procedural schedule to allow for three additional days for CLEC rebuttal testimony. See Section V, below.

⁵ Of course, the parties are free to enter into discussions, settlement or otherwise, outside the context of this proceeding. If the parties reach agreement on issues within the scope of this proceeding, the settling parties may present that agreement to the Department for approval. The Department can rule on any changes to the procedural schedule at that time.

V. RULING

Accordingly, the Motion of AT&T, Sprint, Global Naps, Covad, Conversent, and Allegiance to suspend the current litigation proceedings and to establish an industry task force on network security is hereby denied. The moving parties' request for an expedited ruling on the Motion is hereby granted. The procedural schedule is amended as follows:

CLEC rebuttal testimony due: May 15, 2002

All other procedural dates to remain the same.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by May 9, 2002. A copy of this Ruling must accompany any appeal. Responses to any appeal must be filed by May 13, 2002.

May 6, 2002
Date

_____/s/_____
Joan Foster Evans
Hearing Officer

cc: Mary L. Cottrell, Secretary
William P. Agee, Assistant General Counsel
Michael Isenberg, Director, Telecommunications Division
Debra Conklin, Telecommunications Division
Service List